

..Buffalo County Minutes

Committee/Board: Zoning Board of Adjustment

Date of Meeting: December 3, 2019

Electronic and Hardcopy Filing Date: February 18, 2020

The meeting was called to order at 9:00 a.m. by Chairman, Dale Klopp. Barry Draskowski, Ronald Kazmierczak, Dale Klopp were all present.

The public notice for the hearing was read aloud.

Others present for all or part of the public meeting include Mike Owecke; Zoning Administrator, Julie Lindstrom; Administrative Assistant in the Zoning Department. Andy Goss, Phyllis McQuiston, Bernie Brunkow, Ben McQuiston, Lloyd McQuiston. Others may have been in attendance that did not sign in.

Minutes are summarized as follows:

Agenda item #3 was reviewed by Mr. Klopp.

Mr. Schultz was not in attendance at this time. Motion by Mr. Kazmierczak, seconded by Mr. Klopp to table Variance Application #2019-2. All in favor. Carried.

Agenda Item #4 was reviewed by Mr. Klopp. Conditional Use Permit #2019-18. Lloyd McQuiston. Mr. Owecke addressed the Board members with some correspondence that were received in the Zoning office that have not been reviewed previously by the Board members. First document was a letter from the DOT. Second one is an e-mail from a neighboring property owner that was sent to the Zoning office this morning (12-3-2019). Third was a more recent google earth image of the applicants property. BOA took time to review the correspondence.

Mr. James Schultz entered the public hearing at this time.

Applicant's Presentation. Mr. McQuiston explained what he would like to do. I was required to do it by Zoning. I am not sure it is going to affect everything that I need to do. What it boils down to is, I need a permit to move my items from the Town of Belvidere property to the Town of Naples property, which I probably would have done, if I had not been scared about two and a half years ago by Zoning showing up and telling me I was operating a salvage yard. I am not operating a salvage yard. I never had. It is my collection of automobiles, tractors, farm equipment, garden and landscaping equipment. I guess I need the permit to do so and that is the road I am going down. I hope you can figure that through this there are many requirements that were put on me and one of them is to put up a building with four thousand square foot floor space. I don't know what that kind of building would cost. I know I can't afford it, but I want to dispose of my property. Moving it from Belvidere to Naples and putting it in a shed and then moving it out one week to sell it and one week to dispose of it and get it off my property. It is impossible also to say that I have to move or dispose of my property that is in the Town of Naples and the stuff that I moved there. I don't know of anyone that has to get rid of their collection because someone doesn't like the looks of it or something. I am not about to either and a lot of my equipment is still in the Town of Belvidere, like my tractor backhoe, which I wish I had in the Town of Naples, but I was told I couldn't move anything up there. Otherwise I would get another letter. Mr. McQuiston continued to talk about the items he has at his property in Town of Belvidere.

Mr. McQuiston continued by saying that he is probably going to have three auctions when he gets his things to the Town of Naples. He can do a better job of organizing them there to make some money on them. He explained there is no place at the Belvidere property for an auction. Mr. McQuiston explained that he knows how an auction works and he pretty much knows what things are worth. Mr. McQuiston continued talking about the equipment and parts and his plan to restore them. He explained that he never had a place in Belvidere to work on them and by the time he moved them where he could work on them, he would be referred to the proper enforcement and that is one reason why he moved to the Town of Naples. Mr. McQuiston stated that the other reason is that he was about to eliminate his neighbor. The neighbor was the one that was really causing him a lot of trouble and he is still causing him trouble.

Mr. McQuiston continued. We are here today, I guess to hope to convey to you what I am trying to do. I am not trying to hurt the environment. I am not trying to hurt my neighbor. I am only trying to enjoy myself. This is my enjoyment to take an old vehicle or piece of machinery and make it operate as it was.

- Mr. Klopp – Mr. McQuiston, I don't want to hear a lot of what has been going on, we want you to talk about your application.
- Mr. McQuiston – I just want you to know that facts.

This ended the applicant's presentation.

Public Comments. Andy Goss - stated that he is a close neighbor to the applicant property in the Town of Naples. He has no problem with what Mr. McQuiston is doing on his property there. He expressed concern on why Mr. McQuiston was picked out when there are other sites of noncompliance in Buffalo County. Mr. Kazmierczak questioned whether Mr. Goss has seen the Belvidere property and Mr. Goss stated he has not. Phyllis McQuiston - stated that she is the wife of Mr. McQuiston and they have been married for 50+ years and are 75 years old. Mrs. McQuiston stated that she just wants them to be left alone, want to get along with their neighbors. They have been working really hard to clean up their property in Belvidere and expressed concern they are in trouble with their property in Belvidere and hope that the Board can understand what they are going through, because it is not good. Bernard Brunkow – stated that he has been friends with Mr. McQuiston for years. He believes that Mr. McQuiston is really serious about cleaning up the Belvidere property. Mr. Brunkow does not think that it is feasible to get that done in one year and after walking the property with Mr. McQuiston and think he needs about three years to get that done. Mr. Brunkow gave an overview of the property in Naples and stated this would be a good location for auctions. Mr. Brunkow continued by stated that he attended the Town Board meeting and one neighbor was also at the meeting and had no objection to placing the items from Belvidere at the Naples site. A second neighbor expressed concern for property values if Mr. McQuiston starts putting his items at the Naples site. Mr. Kazmierczak questioned and learned that Mr. Brunkow lives in Nelson. Mr. Kazmierczak questioned that Mr. Brunkow mentioned the value of some of the items and Mr. Brunkow stated that some of the antique items have quite a bit of value. Mr. Kazmierczak questioned how long some of the items have been there and why they have not been sold to make money and Mr. Brunkow stated that if he had some of the vehicles that Mr. McQuiston has, he would not sell them either. Ben McQuiston – is the son of Lloyd and Phyllis McQuiston. He stated he has worked on the property for years and there is a lot of valuable antique items. He stated that he does not think they need to put up a building in the Town of Naples to have an auction. Mr. Ben McQuiston stated that if his dad were to pass away his plan would be to eliminate the things himself. He does not have a place for the items himself. He would like to see the Board and County give his dad more time to clean up the property. He expressed concern over other sites in the county similar to his dad and he is not aware the county is in enforcement with the other sites. Bernard Brunkow – addressed the Board and stated that in his conversations, Mr. McQuiston has come to realize that a lot of the items have become deteriorated to a point where they are just scrap.

Mr. Drazkowski questioned the conditional use permit application for a Home Based Business, construction of a 4,000 square foot building and Mr. McQuiston states he can't afford the cost of the building. It didn't appear to Mr. Drazkowski that the items Mr. McQuiston has would even fit in that size building. Mr. McQuiston may not be able to meet the criteria for a Home Based Business. He expressed concern for the fact that there is 50 years of accumulated items at the Belvidere site and Mr. McQuiston's intention to clean it up, but that has not happened yet, even with the letters that have been sent in the past. Mr. Drazkowski stated that he was concerned that the Board might just be moving one problem from the Town of Belvidere to the Town of Naples and with the discussion today, there seems to be a potential for creating another salvage yard, type operation, based on our Zoning, in the Town of Naples. Mr. McQuiston addressed Mr. Drazkowski concerns by stating the his son said earlier the if he is gone and not able to get rid of it, his family will. Mr. McQuiston continued by saying that if he said he would move the property, he will, but he can't do it in a one year's time. Mr. McQuiston also expressed concern and the impact that weather can have on his ability to clean up the property and move items to the Town of Naples in one year.

Mr. Drazkowski questioned a comment made by Mr. McQuiston and how he approached by the Zoning Department about two and a half years ago. Mr. Drazkowski also questioned if this has been going on for several years between agencies, neighbors and your property, and Mr. McQuiston stated that there is a lot of items there, and his intent is to clean up the property and it hasn't been done yet, then Mr. Drazkowski is struggling with a comment from Mr. McQuiston that he will be cleaning it up now, wondering what has changed now from a year ago. Mr. McQuiston responded by saying that Mr. Owecke drove into his yard and said that his neighbors were complaining that he was running a salvage yard. Mr. McQuiston continued to say that he has removed and sold things. He has lived there for 50 years. I have removed and sold things. When you live somewhere, that is where you keep your things. Mr. McQuiston stated that he intends to clean it up and dispose of some items, but needs more time and continued by saying that if he doesn't, his family will.

Mr. Kazmierczak questioned a comment that was made by either Mr. Brunkow or Mr. McQuiston intend to start salvaging off part of the scrap. There is a lot of items that you, Mr. Brunkow determined to be junk and basically has no value other than scrap. Mr. Kazmierczak asked if they were going through the items and pulling the scrap out and trying to get rid of that and minimize what is there. Mr. McQuiston stated that at this very time, it is hard to do anything. Mr. Kazmierczak questioned the weather and Mr. McQuiston stated that when it freezes up solid then the items are frozen in the ground. Mr. Kazmierczak questioned that Mr. McQuiston has twelve months, until the end of 2020 to salvage out of there. Mr. Kazmierczak stated that somehow it has to be taken care of. If you move it to Naples, you have to do it in the next year anyway. Mr. Kazmierczak questioned and learned that Mr. McQuiston would like to have a building, but he can't afford it and has no intention of constructing a building. He does not see putting up a building that he has no use for and does not think it will increase his property value.

Mr. Klopp questioned Mr. Owecke what it would take to have a salvage yard.

- Mr. Owecke – When Mr. McQuiston first came into the Zoning Department, he stated his desire was to move material form Belvidere to Naples. That would entail creating another salvage yard. You could make the argument there is already one there. The Zoning District in the Town of Naples is in the ANR-40 Zoning District, which is the Farmland Preservation Zoning District. Every Zoning District has its permitted uses and its conditional uses. A salvage yard is not listed as a conditional use in the Farmland Preservation Zoning District, therefore it is a prohibited use.

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Mr. Drazkowski questioned, following Mr. Owecke statement whether the property in Naples with the current salvage operation is in violation of the current Zoning Code or if it is grand fathered prior to the current Zoning Code. Mr. Owecke responded by saying that the new zoning ordinance has been in existence for awhile, there was language included in the new zoning ordinance to say that pre-existing salvage operations have to be complaint with the new code within one year of the passing of the new zoning ordinance. This would require the existing salvage yard to come before the Board of Adjustment to apply for a conditional use permit for a salvage operation. Mr. Drazkowski commented that a salvage yard is still not allowed in an agricultural zoning district.

- Mr. Owecke – A salvage yard is not allowed in an agricultural zoning district. So when Mr. McQuiston came in the Zoning Office, it was his desire to pretty much create a salvage operation in Naples. I think everyone deserves to plead their case. So the only real opportunity for relief for Mr. McQuiston was have him apply for Home or Farm Based Business, which is listed as a conditional use in the ANR-40 Zoning District. If the conditional use permit was granted, he would be able to accumulate salvage material, however it would have to occur within the confines of a building. Outside storage of any material for a Home or Farm Based Business is not permitted.
- Mr. Kazmierczak – To clarify for my own sake, the Home or Farm Based Business, the only way you can legally do that would be within that building.
- Mr. Owecke – That is correct. It is a very complicated situation with the two properties involved. One is under an order for compliance. Any new salvage yard that is created with our ordinance, covers criteria for those. Any new salvage yard has more strict requirements than an existing salvage operation.

Mr. Klopp asked Mr. McQuiston to approach the Board members. Mr. Klopp questioned the location of several items on the aerial photo at the Naples property. Mr. McQuiston pointed out the location of some areas on the map, but the conversation was not clear enough on the audio to include in the minutes.

Mr. Klopp, chair of the Board of Adjustment called for a 5 minute recess. The public hearing continued with CUP #2019-18.

The photo presentation was explained by Mr. Owecke as follows: On Talle Rd looking south, Mr. McQuiston house in the distance. Looking up the Mr. McQuiston driveway. Traveling east from Talle Rd. This is the area where they propose to have the auction. Looking farther south down Talle Rd. This is the intersection of Talle and Swiggum Road, that borders the McQuiston property. Looking north on Talle Rd. Looking across Talle Rd. This is from the top of the driveway where the proposed auction sales will take place. Residence across Talle Rd. I think there are two upper and lower driveway. This photo is looking north along Talle the McQuiston residence. Mr. McQuiston pointed out some items in the photos as follows: my bales of hay behind my semi-trailer that I have covered up there for my cattle. On the right hand side is my pole shed and in the far right hand corner is a chopper box that I use for tires, etc, to keep them out of the weather. Straight ahead there is another little shed. Beyond that is the house. Right there in front of the shop is a lot of parts. That is where I do my repair work. Part of it is things that I need parts to repair things and some of it is for disposal. Mr. Owecke continued. This is from the top of the driveway looking north. This is the residence of the individual that addressed the letter to the Board. Mr. McQuiston – On the far right-hand corner of the photo there is a building which is investment business they were running for the 5 years I have been there. That just dissolved, there is no business there. Next to that is the new house that was built in 2010. The building where the horse trailer is, that is a barn. This is the driveway looking north. Mr. McQuiston pointed out some of the machinery parked along my driveway. Mr. Owecke continued. So this is Swiggum Road looking back toward the residence. There are several vehicles and material here, but you can't really see it from the road with the evergreens there. Mr. McQuiston pointed out his garden in the

photo. He also pointed out a semi trailer he uses for storage. He explained he left the row of trees along the road as a barrier, so people can't see what he has there. Beyond and on the left hand corner, beyond over the hill to the road, Mr. McQuiston pointed out his yard and the back side of his house. He has vehicles there that he needs to do some work on. He stated some vehicles run. His motor home is sitting there. Mr. McQuiston stated that the semi-trailer, they are approximately 300 feet from the road. In the summertime you can't see none of that, when the leaves are on. Mr. Owecke continued. This is the very extent of the 20 acre parcel. There is a field drive that comes off Swiggum Road that goes down to the rear of the property. Mr. McQuiston stated that right straight ahead is a self-unloading wagon on the left. He pointed out more farm equipment and items on the property. He pointed out the corn picker. Mr. Klopp questioned his use of the self-unloading box for corn and Mr. McQuiston explained that he was going to use it for chopping, but he was not able to chop due to weather conditions and the corn dented, but never got ripe. This ended the photo presentation at the Town of Naples site. Mr. Klopp questioned and Mr. Owecke stated that he visited the Naples site the week before the hearing, the week of November 25th.

Mr. Owecke offered to show photos from the Town of Belvidere site. Town of Belvidere photos were reviewed by Mr. Owecke as follows: Mr. Owecke stated that he has quite a few photos and would move through quickly. These are photos taken from Highway 35. House that was on site. Entrance to the driveway. Mr. McQuiston pointed out on several photos where things were not there any more and explained that scrap gets hauled to Winona. Mr. McQuiston pointed out a '57" Ford. Mr. Klopp questioned this vehicles value and Mr. McQuiston stated that it is worth quite a bit, just for parts, this vehicle could be restored and as is, it is worth \$3,000. Mr. McQuiston stated that some of the vehicles are for parts, some for rebuilding and some for scrap. Mr. Owecke stated that when he was up on the property, there were over 100 vehicles along with tractors and a school bus. This ended the photo presentation at the Town of Belvidere site.

- Mr. Kazmierczak – Mr. Owecke would you explain one thing to me and we have auctions all over the countryside, farm auctions and things. They are set for a specific date. Things are brought to the site and sold and it is not a home based business, but it is a one-time occurrence, correct. Is that how we get around the home-based business. Mr. Owecke responded by saying that he is not an authority on auctions. Mr. Brunkow explained in detail consignment sales and auctions.
- Mr. Kazmierczak – What I am getting at is I think there is a way that you could do this using one of those operations as well. If Mr. McQuiston wanted to get rid of vehicles, and I understand you don't want to get rid of any vehicles, but if you wanted to, you could take them to a consignment sale. Mr. McQuiston responded by saying that he does.
- Mr. Klopp – I was going to ask also and questioned on-line sales. Items are brought to a location that is pretty local, but the sale itself is done on-line and questioned the permitting for that.
- Mr. Owecke – I know the location you are talking about, I noticed their sign, but I do not know what kind of permitting is necessary. I have never looked into it.

Process for auctions was discussed.

- Mr. Kazmierczak – Ben, I understand what you are saying about having auctions, but we are looking right now at, we have two options here. One is we can't do a salvage yard in the Town of Naples, so it has to be a home based business and the way the law is written, his items have to be inside a 4,000 sq. ft building and Mr. McQuiston is telling us he can't do that. So then what do you do with the stuff. You are working on cleaning it up and scraping it out and then there is the other option. Mr. Brunkow made some good points about some of these vehicles and you did as well. They are probably worth the money and an auction is one way to get rid of it. I am just trying to figure out if there is any other way and I think that is the only way I can see for this to work.

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Mr. Klopp questioned ownership of the Town of Belvidere property and learned that it is in the names of Mr. McQuiston's children, two daughters and Ben McQuiston. Mr. Klopp explained because the property looked like it was in the name of Pam Wiczorek and learned that is one of the daughters.

Mr. Kazmierczak explained that the Board has to look at this as a home based business and be able to meet the requirements in the code with the current language.

- Mr. Draskowski – Based on the conditional use permit, the requirement for a home based business and the public interest and especially in the ordinance as stated.

Motion by Mr. Draskowski, seconded by Mr. Kazmierczak to deny conditional use permit #2019-18 for a Farm or Home Based Business.

- Mr. Kazmierczak – I don't think there is any way we legally can approve this application under the current law the way it is written, we have no choice.

Discussion was held on what Mr. McQuiston would need to do to comply; he wants to comply. Mr. Klopp stated that the code would require Mr. McQuiston to construct a building to put his items in. Mr. McQuiston explained he could not afford a building. He also stated that he has not checked into the prices, but decided to wait to see what one would cost until he found out if the conditional use permit was approved or not.

- Mr. Kazmierczak – I am just going through the actual code here and it says (*Mr. Kazmierczak read the zoning code Chapter 9, 16, 5&6*) I don't know how you are going to meet the code if you are trying to auction the material off and store it out there. That is not going to work. The other thing is if we want to do it as a salvage yard, which it is probably more likely what it is, you can't even do that in the agricultural zoning district.

Mr. Kazmierczak explained that the Board can't authorize and approve the permit under the current code, so they have no choice. Mr. Kazmierczak stated that he did not think, looking at the code that a Farm or Home Based Business applies, but continued to say that the Board just has to deal with the information they have available for this conditional use permit.

All in favor. Carried. All members voting to deny conditional use permit #2019-18.

Mr. McQuiston questioned what he could do now. A rezone was suggested and Mr. Owecke explained that the only Zoning District in Buffalo County where salvage operations are permitted is the Industrial Zone and that would require a re-zone of the property. Mr. Owecke continued by explaining Mr. McQuiston is currently in violation of a scenic easement held by the state of Wisconsin with his property on highway 35. A rezone on that property would not be possible. Mr. Owecke stated that the property on Highway 35 needs to get cleaned up. Mr. McQuiston stated that would take three years.

This ended the discussion with Conditional Use Permit #2019-18.

Variance #2019-2. Jason Schultz. Applicant presentation. Mr. Schultz stated he would like to put up a new shed on his property. He built a house in 2015 and decided at that time he was going to put up a shop/shed in the proposed location. His driveway, well, septic system were all located so the shed could be constructed at the proposed site. At the time he constructed his home, the property line set back was at 10 feet. Last year when the Zoning Ordinance was revised, the setback was changed to 20 foot setback. Doesn't work with the

appearance of the house and the waterflow on the property to locate the shed in another location. I am just looking for approval to go back to the 10 foot setback.

Mr. Kazmierczak questioned locating the shed to the west of the house along the north property line and asked Mr. Schultz to approach the Board. Mr. Kazmierczak pointed out a couple locations on the aerial photo for possible construction sites. Mr. Schultz explained that he is planning to have heat, water and sewer in the new shop and it would be easier to tie into the existing heat, well and septic system at the proposed location. Mr. Schultz also pointed out the gas line and indicated it is 10 feet off his property line on the neighbors property and there will be no building between his property line and the gas line.

Mr. Klopp questioned the location of the gas line and the proposed construction and Mr. Schultz explained when he did some landscaping, diggers hotline came out and marked it and told him that is was OK as long as he didn't cross the fence line.

Photo presentation at this time. Mr. Owecke reviewed the photos as follows: First image is standing on Wulff Rd looking down the driveway to the house. Looking east. Looking south, west, north and back east again. Looking west from a little way up the driveway. Here you can kind of see their configuration. You have the property line here, the LP, the at-grade system, located here is the wood burner. This level area is where the shed is proposed to be located. This is the driveway up to the shed, and again the septic system (at-grade) and the wood stove. Mr. Klopp questioned and learned that the house was built in 2015.

- Mr. Klopp – Is there a lot of water that goes down to where you want to build.
- Mr. Schultz – There is a grade, but that is not finished yet. When the shed is put up, they are going to come back and re-shape to have the water running down between the shed and the house.
- Mr. Klopp – Will that water be running down your driveway.
- Mr. Schultz – We are actually shaping it to go down the side of the driveway. You can kind of see somewhat of a ditch there.
- Mr. Owecke – The water will drain down through this area right here. North side of the driveway.
- Mr. Owecke – When they issued the permit in 2014 for the house, at that time, the side-yard setback was 10 feet, since they built the house, it has changed to 20 feet. That is in the new code that was passed last year.

This ended the photo presentation.

Mr. Kazmierczak questioned whether the sanitary system for the house was large enough to handle the shed and Mr. Owecke explained that when a septic system is sized for a house it is sized based on the number of bedrooms and not bathrooms, so the existing septic system would be compliant.

Mr. Kazmierczak questioned Mr. Schultz whether the initial plans that were submitted with the house included the shed. Mr. Schultz explained the shed was a future project and not part of the initial design.

- Mr. Kazmierczak – My initial reaction was to deny the variance request. Let me explain why. The way the code is written, it talks about unnecessary hardship and hardship can't be self-caused, however, after hearing the 20 foot, 10 foot, issue, and the fact that you were planning on the shed, I think the plan all along was to put this shed where it is proposed. In light of that my recommendation is to approve.

Conditions proposed as follows:

1. Shed shall maintain the reduced minimum setback of 10 feet from the parcel south property line.

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2. Variance shall only apply to the one single shed accessory structure as proposed.
3. Applicant shall apply for a zoning permit allowing the construction of an accessory structure.

Motion by Mr. Kazmierczak, seconded by Mr. Klopp to approve Variance #2019-2 for Jason Schultz, subject to the conditions proposed by the Zoning Staff. All in favor. Carried.

Motion by Mr. Kazmierczak, seconded by Mr. Drazkowski to approve the minutes from the October 22, 2019 public hearing as printed. All in favor. Carried.

Motion by Mr. Klopp, seconded by Mr. Kazmierczak to adjourn. All in favor. Carried.

The public hearing was adjourned at 11:00 a.m.

Respectfully Submitted,
Julie Lindstrom, Zoning Administrative Assistant